

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHRISTOPHER M. PAYNE,)	4:11CV3017
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
FRED BRITTEN, et al.,)	
)	
Defendants.)	

This matter is before the court on its own motion. Plaintiff has filed a Complaint and an Amended Complaint alleging that Defendants are reading and censoring both his incoming and outgoing mail in violation of his constitutional rights. (Filing No. [18](#) at CM/ECF pp. 3-7; Filing No. [1](#) at CM/ECF pp. 3-7.) More specifically, Plaintiff alleges that several individual Tecumseh State Correctional Institution (“TSCI”) employees (collectively the “TSCI Defendants”) are censoring his mail at the request of Federal Bureau of Investigations Agent Jerry Bell (“Bell”), who is investigating Plaintiff for alleged involvement in “illegal activity.”¹ (Filing No. [1](#) at CM/ECF pp. 6, 12; Filing No. [18](#).) Liberally construed, Plaintiff asserts he is not engaged in any illegal activity and maintains that his mail is being censored and confiscated in violation of his rights, rather than as part of an investigation. (Filing No. [18](#) at CM/ECF pp. 3, 6; Filing No. [1](#) at CM/ECF pp. 3, 6.)

On initial review, the court dismissed several of Plaintiff’s claims. (Filing No. [20](#).) However, the court permitted Plaintiff’s First and Fourth Amendment claims for injunctive relief against Bell and the TSCI Defendants in their official capacities, and Plaintiff’s First and Fourth Amendment claims against Bell and the TSCI Defendants in their individual capacities, to proceed. (*Id.*) After being served with Plaintiff’s Amended Complaint, and the court’s Order on initial review, Defendants filed several

¹Plaintiff mentions that this illegal activity may be allegations of “child enticement.” (Filing No. [1](#) at CM/ECF p. 3.)

Motions to Dismiss along with Briefs in Support. (See Filing Nos. [37](#), [38](#), [43](#), [44](#), [48](#) and [49](#).)

In their Briefs, Defendants argue, among other things, that they are entitled to qualified immunity. (See, e.g., Filing Nos. [38](#) and [49](#).) This argument is based on Defendants' assertion that they are censoring and confiscating Plaintiff's mail because they are cooperating with, or conducting, a criminal investigation. (*Id.*) However, Defendants have provided no evidence supporting this argument. Indeed, there is nothing before the court showing that such a criminal investigation is, or was, ongoing. Accordingly, Defendants shall have 14 days to supplement the record with properly authenticated evidence to show that they were censoring and confiscating Plaintiff's mail in accordance with a legitimate criminal investigation.

IT IS THEREFORE ORDERED that:

1. Defendants shall have 14 days to supplement the record with properly authenticated evidence to show that they were censoring and confiscating Plaintiff's mail in accordance with a legitimate criminal investigation.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: **March 23, 2012**: deadline to file supplement.

DATED this 8th day of March, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge

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